Court No. 2

CIVIL Misc. Writ Petition No. 1973 (S/S) of 2001
(Old No. 36127 of 1998)

Sanjai Kumar ----------Petitioner

Versus

State of U.P. and two others ---------- Respondents

Hon'ble P.C.Verma,J.

By means of this writ petition, the petitioner has prayed for issue of a writ in the nature of certiorari to quash the order dated 01.05.1998 passed by the respondent No. 3- Deputy Inspector General of Police, Garhwal Region, Garhwal, contained in Annexure No. 2 to the writ petition, with a further prayer to issue writ of mandamus directing the respondent No.3 permit the petitioner to join on the post on which he was working.

The petitioner was recruited as Constable on 01.09.1989 in a selection held in District – Pauri Garhwal. The petitioner was sent for training in Police Training College, District–Mainpuri after Completing his training in Police Training College, Bareilly. In the meantime the petitioner was transferred from District Pauri Garhwal to District Chamoli. While the petitioner was in training alongwith other 65 recruit in Police Training College, Mainpuri in October 1990, Six days, "holiday" was declared in Police Training College, Mainpuri. The petitioner alongwith six other recruits on 17.10.1999 proceeded to their respective permanent residences to celebrate Diwali festival. The Petitioner returned on seventh day after availing Diwali vacations and resumed training. By the impugned order dated 19.12.1990 the services of the petitioner were terminated. The services of the petitioner as well as Sanjay Kumar Malik were

terminated by the respective Superintendent of Police, District-Chamoli and District–Pauri Garhwal in exercise of powers under Rule 3 of U.P. Temporary Government Servant (Termination of Service) Rules 1975 and by offering one month's salary in lieu of notice.

The Deputy Inspector of General, Garhwal Region, Garhwal, is the appellate authority under the Police Regulation to decide the appeal preferred by the Sub Inspectors, Head Constables and Constables under the regulation 508 against the punishment order. Sri Sanjai Kumar Malik filed appeal before the appellate authority i.e. Deputy Inspector General of Police, Garhwal Region. Some delay also occurred in filing the appeal by the petitioner. The appeal of Sanjai Kumar Malik was allowed and the order of termination was set aside by the appellate authority but the appeal of the petitioner was rejected on the ground that it was filled after the expiry of prescribed period of appeal. Against this rejection order, petitioner preferred writ petition before Allahabad High Court, bearing wirt petition No. 10306 of 1998, which was allowed and the Deputy Inspector General of police, Garhwal Region, Garhwal was directed to decide the appeal on merit. It appears from the perusal of the judgment of both the appeals that in the meantime, the Deputy Inspector General of Police Garhwal Region was transferred and the appeal of the petitioner was decided by the successor in office by dismissing the same which is impugned in this writ petition.

Learned counsel for the petitioner submitted that since the order of termination has merged in the appellate order, therefore if the order of appeal is set aside, the termination order will ipso facto be set aside.

The main ground of challenge is that out of six Constables, four were not terminated. Two Constables were terminated who were posted in hill districts through all were guilty of

the same charges i.e. absenting themselves from duties on the eve of Diwali. The Deputy Inspector General of Police, Garhwal Region allowed the appeal of Sanjai Kumar Malik by the judgment dated 25.06.1991, contained in Annexure No. 1 to the writ petition, who was terminated for the same reason and grounds of the appeal were same while the appeal of the petitioner has been dismissed by the D.I.G. Garhwal Region because the officer was changed. The further attack is that the parity has not been granted to the petitioner on the ground that is was the discretion of the authority concerned as to how he appreciates the facts.

Learned counsel for the petitioner submitted that because of the change of the officer, decision cannot be changed on the same facts. The learned counsel further submitted that the appellate order has been passed in violation of Article 14 of the Constitution of India and is untenable under law. He placed reliance on the Apex Court judgment in **Director General of Police and others versus G.Dasayan, reported in (1998) 2 Supreme Court Cases, page 407.**

On the other hand, learned State Counsel submitted that as Sri Sanjai Kumar Malik was absent from duty for three days while the petitioner was absent from duty for six days. Therefore, the petitioner cannot claim parity.

The Apex Court in case of **Director General of Police and others versus G.Dasayan** (Supra) found the dismissal order discriminatory on the basis of parity of punishment with co-delinquents. In the said case the respondent in the appeal was Police Constable in Kanyakumari District, Tamil Nadu. He was proceeded departmentally on the similar charges out of which the head Constable was compulsorily retired by the disciplinary authority and some were let off. It was contended before the Apex Court as noticed in the judgment that the charges were identical, the punishment

imposed was discriminatory and could not be sustained. The Supreme Court has noticed the said argument as under:-

> "The third ground that the co-delinquents except the Head Constable were let off though the charges were identical, it is stated by the learned counsel for the appellants that the Disciplinary Authority did not agree with the findings of the Enquiry Officer so far as those two delinquents were concerned. However, the Head Constable, who was also charged along with the respondent, was compulsorily retired by the Disciplinary Authority."

The Apex Court substituted the order dismissal into order of compulsorily retirement accepting the aforesaid contention. In the case in hand the appeal filed by Sanjai Kumar Malik was allowed by the D.I.G. Police, Garhwal Region setting aside the termination order which was passed for the same reasons. The finding of the appellate authority –D.I.G. Police, Garhwal Region in appeal filed by the petitioner that it is the discretion of the authority as to how he appreciates the facts, on which he forms his own opinion for a judgment cannot be sustained for the reason that if the discretion fairly and reasonably exercised on the similar set of fact, decision will be one otherwise the decision will be hit by arbitrariness and will be in violation of Article 14 of the Constitution of India.

Therefore, the petition deserves to be allowed and the order dated 01.05.1998 passed by the Deputy Inspector General of Police, Garhwal Region deserves to be quashed. Accordingly, a writ of certiorari is issued. The impugned order, in which the termination order has merged, is hereby quashed. The petitioner be put back in service but will not be paid the arrears of salary from the date of termination till date.

22.08.2003
P.Singh

(P.C.Verma,J.)